

Criminal Case No.15049/2021

Order Below Exh.1(Charge-sheet)

(1) Prosecution has filed police charge-sheet against the accused under the provision of Code of Criminal Procedure 173 for the offence punishable under Section 188 of I.P.C. and Section 51(a) of Disaster management Act,2005.

(2) Considering the allegation against the accused levelled by the prosecution before taking cognizance of offence, a question on law point arise, Whether this Court can take cognizance on police charge-sheet for the offence under Section 188 of I.P.C. and Section 51(a) of Disaster Management Act, 2005?

(3) In my view, before taking cognizance of offence, this Court has to take into consideration of provision of Section 195 of Code of Criminal Procedure and Section 60 of Disaster Management Act,2005.

(4) For the sake of convenience Section 195 of Code of Criminal Procedure and Section 60 of Disaster Management Act is reproduced as under:-

Section 195 of Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offence relating to documents given in evidence as under:-

(1) No Court shall take cognizance-

- (a) (i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
- (ii) of any abetment of, attempt to commit, such offence, or
- (iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

Disaster Management Act, 2005.

Sec. 60 - of Cognizance of offences as under:-

"No Court shall take cognizance of an offence under this Act except on a complaint made by-

- (a) the National Authority, the State Authority, the Central Government, the State Government, the

District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be; or
 (b) *any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid.*

(5) Considering the above provision of Section 195 of Code of Criminal Procedure and Section 60 of Disaster Management Act, 2005, this Court has to take cognizance as per the provision of Section 190 of Code of Criminal Procedure but however, certain things are placed under exemption as per Section 195 to 199 of Code of Criminal Procedure, Until a complaint is filed under Section 2(d) of Code of Criminal Procedure, there is a specific bar on taking cognizance of certain offences. Section 195(1)(a) of Code of Criminal Procedure provides that Section 172 to 188 of I.P.C. there must be a complaint to be filed in a Court and when there is no complaint as provided Section 2(d) is filed, then there is a specific bar on taking cognizance of the offence punishable under Section 172 to 188. There is catina of decisions wherein Honourable Gujarat High Court and Honourable Supreme Court has laid down the ratio that until a complaint as provided Section 2(d) is filed before the Court. There is a specific bar in taking cognizance of offence punishable under Section 172 to 188. In reported case 1997 (2) G.L.H 349 *Nirmalaben Arvindbhai Versus Kalavatiben Natwarlal*, 1997 (3) G.L.R. 501 *Nitishchandra Manilal Versus State of Gujarat*, 1999(1) G.L.R. 790 *Ramji Bhikha Koli Versus State of Gujarat* wherein Honourable High Court of Gujarat has laid down the ratio that until police files a complaint, no Court shall take cognizance on charge-sheet and if Court has taken cognizance upon charge-sheet then in that case the said case is merely " a piece of paper". Similar ratio has been laid down by Honourable Supreme Court in a reported case AIR 1984 Supreme Court 1108 *State of U.P. Versus Sureshchandra Shri-vastva*, AIR 1982 Supreme Court 1238 *Chandrapalsingh Versus Maharajsingh* wherein it

is also held that under Section 195 of Criminal Procedure Code there is bar on taking cognizance of a certain offence as provided under Section 172 to 188 of I.P.C.

(6) In the case on hand, Prosecution has also levelled charges of Section 51(a) of Disaster Management Act, 2005 and thereby, has filed a police charge-sheet under Section 173 of Code of Criminal Procedure. However, considering the provision of Section 60 of Disaster Management Act, 2005 there is specific bar on taking cognizance of an offence except a complaint made by a National Authority, The State Authority, The Central Government, The State Government, The District Authority or another authority or officer authorized in this behalf by that authority or Government as the case may be. Therefore, considering Section 60 of Disaster Management Act, it is crystal clear that for an offence under this Act one has to file complaint as envisaged under Section 2(d) of Code of Criminal Procedure and specifically by a person authorized by the Government or the authority. In the instant case police has filed charge-sheet for the said offence and not filed a complaint as provided under Section 60 of Disaster Management Act. Considering the papers submitted along with the police charge-sheet there is nothing on record which shows that complainant was authorized by the State Government or Central Government or disaster Management Authority to file a complaint on behalf of them. Hence, this Court can not take cognizance on police charge-sheet without authorizing complainant to file complaint against the present accused.

(7) Considering the police charge-sheet and papers submitted along with the charge-sheet, in the instant case also, police has levelled charges of Section 188 of I.P.C and Section 51(a) of Disaster Management Act, 2005 but police has not filed a complaint as envisaged under Section 2(d) of Code of Criminal Procedure and Hence, there is specific bar on taking cognizance of such offence considering the Section 196 of Code of Criminal Procedure and Section 60 of Disaster Management Act, 2005. This Court has no other option except to stop the proceedings and discharge the

present accused as provided under Section 258 of Code of Criminal Procedure and hence, following order is passed:-

:O R D E R:

(1) Present proceedings against the accused is ordered to be stopped under Section 258 of Code of Criminal Procedure.

(2) Accused is hereby ordered to be discharged for the offence punishable under Section 188 of IPC and Section 51(a) of Disaster Management Act, 2005 under the provision of Section 258 of Code of Criminal Procedure, 1973.

(3) Bail and bond of accused is hereby ordered to be extended for the further period of six months under the provision of Section 437(a) of Code of Criminal Procedure.

(4) Prosecution can move an application under Section 300(5) of Code of Criminal Procedure on a later stage if prosecution satisfy the Honourable Court that provisions of Section 195 of Code of Criminal Procedure and Section 60 of Disaster Management Act, 2005 has been complied of.

Date : 10/07/2021
Place: Vadodara

DEEPAK SURYAKANT DABHI
19th Add.Sr.Civil Judge
& ACJM, Vadodara
Code:GJ01018